

STATEMENT OF EMERGENCY
810 KAR 6:010E

This emergency regulation is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC") to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)

810 KAR 6:010E. Exotic wagering.

EFFECTIVE: February 25, 2021

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and KAR Title 810.

Section 1. All Pari-mutuel Wagers on a Historical Horse Race or Races Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission.

(1) An association shall not offer an exotic wager on any live or historical horse race or races without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager prior to the commission deciding on the request.

- (a) The presentation shall be made by the association during a meeting of the commission.
- (b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.
- (c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition of approval for the exotic wager.
- (3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.
- (4) In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the wager should be approved.
- (5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:
 - (a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and
 - (b) The wager complies with KRS Chapter 230 and KAR Title 810.
- (6) The commission shall notify the association if it determines that the criteria set forth in subsection (5) of this section are no longer being met and it intends to withdraw approval of a particular exotic wager.
- (7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

Section 3. Exotic Wagers on a Live Horse Race or Races.

- (1) Except as set forth in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race or races, which shall include a detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts.
- (2) If the rules have not been modified since the pari-mutuel wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on a Historical Horse Race or Races.

- (1) An association shall submit a written request to the commission for permission to offer any exotic wager on a historical horse race or races, which shall include:
 - (a) The types, number, and denominations of pari-mutuel wagers to be offered;
 - (b) A detailed description of the rules that apply to the pari-mutuel wager, and the method of calculating payouts;
 - (c) The days and hours of operation during which wagering on historical horse races will be offered;
 - (d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement referenced in Section 6(2) of this administrative regulation between the association and one of the following horsemen's organizations, as applicable:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on historical horse racing shall request, in any application submitted for a license, to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct racing for 2010, or the number of races initially applied for by the association in its application to conduct racing for 2010, if written approval is obtained from the commission, and from one of the following horsemen's organizations, as applicable:

1. for thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. for standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. for quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. for Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. for appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

Section 5. Terminals Used for Wagering on a Historical Horse Race or Races.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as set forth in Sections 2(5) and 5(2) of this administrative regulation. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on historical horse races shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout.

(1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages set forth in KRS 230.3615 or KRS 230.750, as applicable.

(2)(a) Each association shall enter into an agreement with one of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

JONATHAN RABINOWITZ, Chair

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on April 22, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any per-

son who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request permission from the Kentucky Horse Racing Commission to offer exotic forms of pari-mutuel wagers on live and historical horse races. It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment. It is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment. It is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place exotic wagers on live and historical horse racing in the Commonwealth, and the commission.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The emergency regulation merely updates language to comply with *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120. This emergency regulation also migrates Title 811 regulations to Title 810. This emergency regulation will not require regulated entities to take any additional compliance actions that they are not already taking.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to offer exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. However, as in previous version of this regulation, the associations that request and receive permission to offer exotic wagering on historical horse races will be required to reim-

burse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Jennifer Wolsing

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, KRS 230.215, 230.361, 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This emergency regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this emergency regulation will preserve tax revenue by allowing associations to continue offering exotic pari-mutuel wagers. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This emergency regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this emergency regulation will preserve tax revenue by allowing associations to continue to offer exotic pari-mutuel wagers. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This emergency regulation is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This emergency regulation is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A